

TAB 25

Thomas Via

October 18, 2005

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SUPERIOR COURT
COMPLEX LITIGATION
DOCKET at TOLLAND

STATE OF CONNECTICUT,
Plaintiff,

vs.

Docket No.
X07 CV-03-0083296-S (CLD)

DEY, INC., ROXANE LABORATORIES, INC.,
WARRICK PHARMACEUTICALS CORP.,
SCHERING-PLOUGH CORP.
AND SCHERING CORPORATION,
Defendants
~~~~~

CONFIDENTIAL

DEPOSITION OF

THOMAS VIA

October 18, 2005  
9:30 a.m.

52 East Gay Street  
Columbus, Ohio

Lori M. Barnes, RPR

Thomas Via

October 18, 2005

11 (Pages 38 to 41)

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| <p style="text-align: right;">38</p> <p>1 that time period?</p> <p>2 <b>A. Contract compliance at hospital</b></p> <p>3 <b>pharmacies.</b></p> <p>4 Q. And what would you do to ensure</p> <p>5 compliance at a hospital pharmacy?</p> <p>6 <b>A. Review sales data against contract</b></p> <p>7 <b>information.</b></p> <p>8 Q. And who would provide you the</p> <p>9 contract information?</p> <p>10 <b>A. The office, corporate office.</b></p> <p>11 Q. Roxane's corporate office would</p> <p>12 provide that information?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And do you know if that department</p> <p>15 was headed -- Do you know who headed that</p> <p>16 particular department at that time?</p> <p>17 <b>A. At that time, no.</b></p> <p>18 Q. Did you also make sales calls to</p> <p>19 pharmacists during this time period?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And what would those sales calls</p> <p>22 consist of?</p> <p>23 <b>A. Contract compliance at the hospital</b></p> <p>24 <b>as well as retail pharmacy to ensure stocking</b></p> <p>25 <b>of promoted products.</b></p> | <p style="text-align: right;">40</p> <p>1 <b>A. No.</b></p> <p>2 Q. Were you sampling any of the other</p> <p>3 products that you were making sales calls on</p> <p>4 with respect to this time period?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Did you discuss any reimbursement</p> <p>7 issues with retail pharmacies that you called</p> <p>8 on during that time period?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Did you discuss average wholesale</p> <p>11 price with retail pharmacies during that time</p> <p>12 period?</p> <p>13 <b>A. I don't recall.</b></p> <p>14 Q. So you may have or you may not</p> <p>15 have, you just can't recall at this point; is</p> <p>16 that correct?</p> <p>17 MR. COVAL: Objection to form.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: I'm sorry?</p> <p>20 MR. COVAL: I said, "Objection to</p> <p>21 form," but you can answer.</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. You just don't have a recollection</p> <p>24 one way or another; is that right?</p> <p>25 <b>A. Correct.</b></p>                              |
| <p style="text-align: right;">39</p> <p>1 Q. Did you have any sales aids that</p> <p>2 you used when you called on retail</p> <p>3 pharmacies?</p> <p>4 <b>A. I don't recall.</b></p> <p>5 Q. You don't recall whether you did</p> <p>6 or did not?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. Did you use any sales aids with</p> <p>9 respect to your discussions or interactions</p> <p>10 with hospital pharmacies?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. What kind of tools were you using</p> <p>13 with respect to hospital pharmacies?</p> <p>14 <b>A. Visual aid and clinical studies for</b></p> <p>15 <b>Oramorph SR.</b></p> <p>16 Q. Oramorph was a pain medication,</p> <p>17 correct?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. Was it also a scheduled pain</p> <p>20 medication?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Were you sampling Oramorph SR</p> <p>23 during that time period?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Not even through the mail sampling?</p>                                                                                                                             | <p style="text-align: right;">41</p> <p>1 Q. How about with respect to the</p> <p>2 hospital pharmacies that you called on during</p> <p>3 that time period, did you discuss</p> <p>4 reimbursement with any of those customers</p> <p>5 during this time period?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Did you discuss AWP or average</p> <p>8 wholesale products with any of those customers</p> <p>9 during this time period?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Did any of the visual aids that</p> <p>12 you used during this time period have</p> <p>13 information about average wholesale price in</p> <p>14 them?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Did any of the visual aids during</p> <p>17 this period contain any information about</p> <p>18 reimbursement?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Do you know if Roxane has a</p> <p>21 department that maintains a historical detail</p> <p>22 information?</p> <p>23 <b>A. No, I don't know.</b></p> <p>24 Q. Do you know anyone at Roxane who</p> <p>25 would have that kind of information?</p> |

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| <p style="text-align: right;">42</p> <p>1 A. Possibly.</p> <p>2 Q. Who would that be?</p> <p>3 A. <b>Judy Waterer.</b></p> <p>4 Q. And what makes you -- What is the</p> <p>5 basis of your contention that she may have</p> <p>6 that type of information?</p> <p>7 A. <b>She's in marketing.</b></p> <p>8 Q. Do you know when Judy Waterer</p> <p>9 started with Roxane?</p> <p>10 A. No.</p> <p>11 Q. I think we went through the 1994</p> <p>12 time period. Now, Tom, did you switch</p> <p>13 positions in 1994?</p> <p>14 A. Yes.</p> <p>15 Q. And what was your new position in</p> <p>16 1994?</p> <p>17 A. <b>Product manager.</b></p> <p>18 Q. And how long did you remain in</p> <p>19 that position?</p> <p>20 A. <b>Approximately three and a half</b></p> <p>21 <b>years.</b></p> <p>22 Q. So, if my math is right, that</p> <p>23 takes us to the 1997-1998 time period,</p> <p>24 correct?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">44</p> <p>1 Q. What was that product?</p> <p>2 A. <b>Oramorph SR, Roxanol, Roxicodone,</b></p> <p>3 <b>Ipratropium Bromide Unit Dose Vial, Duraclon.</b></p> <p>4 Q. Can you spell that?</p> <p>5 A. <b>D-U-R-A-C-L-O-N. That's it.</b></p> <p>6 Q. And do you recall how many other</p> <p>7 product managers there were at Roxane during</p> <p>8 that time period?</p> <p>9 A. <b>It depends on when it is during</b></p> <p>10 <b>that time period.</b></p> <p>11 Q. Okay. How about at the beginning</p> <p>12 of that time period, 1994?</p> <p>13 A. <b>There was one additional.</b></p> <p>14 Q. Who was that?</p> <p>15 A. <b>Tom Sawyer.</b></p> <p>16 Q. Do you recall what products he was</p> <p>17 the manager for?</p> <p>18 A. <b>Marinol, Viramune, V-I-R-A-M-U-N-E.</b></p> <p>19 <b>That's it.</b></p> <p>20 Q. How about as we progress to the</p> <p>21 1997 time period, were there additional</p> <p>22 product managers at that time?</p> <p>23 A. Yes.</p> <p>24 Q. Who were they?</p> <p>25 A. <b>Alex Dusek, D-U-S-E-K. He was --</b></p> |
| <p style="text-align: right;">43</p> <p>1 Q. Was that a position with Roxane?</p> <p>2 A. Yes.</p> <p>3 Q. Who did you report to in that</p> <p>4 position, Tom?</p> <p>5 A. <b>Ed Tupa and Gary Ellexson.</b></p> <p>6 Q. Can you spell Gary's last name,</p> <p>7 please?</p> <p>8 A. <b>E-L-L-E-X-S-O-N, I think.</b></p> <p>9 Q. Was Gary above Ed?</p> <p>10 A. No.</p> <p>11 Q. Equal to Ed?</p> <p>12 A. No.</p> <p>13 Q. So Gary was below Ed; is that</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. What was Ed's title?</p> <p>17 A. <b>Vice president of sales and</b></p> <p>18 <b>marketing.</b></p> <p>19 Q. What about Gary Ellexson, what was</p> <p>20 his title at that time?</p> <p>21 A. <b>Director of marketing.</b></p> <p>22 Q. And you mentioned that your title</p> <p>23 was product manager. Was there a particular</p> <p>24 product that you managed?</p> <p>25 A. Yes.</p>                 | <p style="text-align: right;">45</p> <p>1 I'm sorry.</p> <p>2 Q. What products did Mr. Dusek manage?</p> <p>3 A. <b>He was co-product manager on</b></p> <p>4 <b>Viramune and Azathioprine.</b></p> <p>5 Q. So was Tom Sawyer still in a</p> <p>6 position as product manager in 1997, as you</p> <p>7 recall?</p> <p>8 A. <b>I don't recall. He may have left</b></p> <p>9 <b>the company at that point.</b></p> <p>10 Q. Okay. In addition to Alex Dusek,</p> <p>11 were there any other product managers other</p> <p>12 than yourself?</p> <p>13 A. Yes. <b>Jerry Sincich.</b></p> <p>14 Q. Any others?</p> <p>15 A. Yes. <b>Judy Waterer.</b></p> <p>16 Q. Any others?</p> <p>17 A. <b>Ed Gunn, G-U-N-N.</b></p> <p>18 Q. And can you recall any others?</p> <p>19 A. No.</p> <p>20 Q. With respect to Jerry Sincich, do</p> <p>21 you recall the products that he managed?</p> <p>22 A. <b>Not with any degree of certainty.</b></p> <p>23 Q. What about Judy Waterer?</p> <p>24 A. <b>The multi-source product line.</b></p> <p>25 Q. Is it your understanding that</p>                      |

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| <p style="text-align: right;">46</p> <p>1 multi-source also means generics?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Ed Gunn, do you recall what</p> <p>4 products he was manager for?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Is Ed Gunn still with Roxane?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Is he with Boehringer Ingelheim?</p> <p>9 <b>A. No.</b></p> <p>10 Q. What about Jerry Sincich, is he</p> <p>11 with Roxane still?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Is he with Boehringer Ingelheim?</p> <p>14 <b>A. No.</b></p> <p>15 Q. So you indicated in 1994 through</p> <p>16 1997 you became product manager for these</p> <p>17 five products that you listed. Was that</p> <p>18 considered a promotion?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Did you have sales representatives</p> <p>21 working underneath you at that time?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Did you have sales representatives</p> <p>24 reporting to you at that time?</p> <p>25 <b>A. No.</b></p>                                                                                                                       | <p style="text-align: right;">48</p> <p>1 your prior position before you became product</p> <p>2 manager?</p> <p>3 MR. COVAL: Objection to form.</p> <p>4 <b>A. No.</b></p> <p>5 Q. Did you collect any competitive</p> <p>6 information in your position as a regional</p> <p>7 director of pharmaceutical affairs?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. What kind of competitive</p> <p>10 information did you collect during that 1991</p> <p>11 to 1994 time period?</p> <p>12 <b>A. Promotional activities of</b></p> <p>13 <b>competition.</b></p> <p>14 Q. And what kind of information did</p> <p>15 that include when you say "promotional</p> <p>16 activity"?</p> <p>17 <b>A. Clinical studies, file cards, leave</b></p> <p>18 <b>behind information.</b></p> <p>19 Q. When you say "leave behind," is</p> <p>20 that materials that another sales rep may</p> <p>21 have left behind with one of your customers?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Did you obtain competitive pricing</p> <p>24 information from any pharmacists during that</p> <p>25 time period?</p>                                                                                    |
| <p style="text-align: right;">47</p> <p>1 Q. Did you get any information from</p> <p>2 the sales force during that time period?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. What kind of information would you</p> <p>5 get from the sales force during that time</p> <p>6 period?</p> <p>7 <b>A. Competitive information.</b></p> <p>8 Q. Any other types of information that</p> <p>9 you would receive from the sales force?</p> <p>10 <b>A. Not that I recall.</b></p> <p>11 Q. And what types of information did</p> <p>12 you receive that you considered to be</p> <p>13 competitive information?</p> <p>14 <b>A. Promotional activities.</b></p> <p>15 Q. Anything else?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Did you receive competitive pricing</p> <p>18 information from your sales force?</p> <p>19 <b>A. I don't recall.</b></p> <p>20 Q. You don't recall one way or</p> <p>21 another whether you did or did not?</p> <p>22 MR. COVAL: Objection to form.</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. Is that -- Is competitive pricing</p> <p>25 information something that you obtained in</p> | <p style="text-align: right;">49</p> <p>1 <b>A. No.</b></p> <p>2 Q. What about the 1994 to 1997 time</p> <p>3 period, did you obtain any competitive</p> <p>4 information from any pharmacists during that</p> <p>5 time period?</p> <p>6 <b>A. No.</b></p> <p>7 Q. So we just talked about the type</p> <p>8 of sales force information that you received</p> <p>9 during the 1994-1997 time period as a Roxane</p> <p>10 product manager. What were your specific job</p> <p>11 responsibilities as a Roxane product manager?</p> <p>12 <b>A. Developing promotional strategies</b></p> <p>13 <b>for the products, launching new products,</b></p> <p>14 <b>forecasts, sales forecasts, sales and</b></p> <p>15 <b>production forecasts.</b></p> <p>16 Q. Let me clarify that. Forecasting</p> <p>17 sales and production was one of your</p> <p>18 responsibilities, correct?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Anything else that you can</p> <p>21 remember, Tom?</p> <p>22 <b>A. Budget, expense budget. That's it.</b></p> <p>23 Q. Did you have any responsibilities</p> <p>24 for organizing sales meetings?</p> <p>25 <b>A. No. I presented at sales</b></p> |

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14 (Pages 50 to 53)

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| <p style="text-align: right;">50</p> <p>1 meetings.</p> <p>2 Q. With respect to the first job</p> <p>3 responsibility that you mentioned, which was</p> <p>4 developing promotional strategies, how did you</p> <p>5 perform that job responsibility? What did</p> <p>6 you do?</p> <p>7 A. We looked at what the competition</p> <p>8 was doing and developed promotional detail</p> <p>9 aids to counteract the detailing of our</p> <p>10 competition as well as promote the benefits</p> <p>11 of our products.</p> <p>12 Q. Were you involved in pricing as</p> <p>13 part of the developing of promotional</p> <p>14 strategies?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Do you know whose responsibility at</p> <p>17 Roxane developing pricing was during that time</p> <p>18 period?</p> <p>19 A. I believe it was Ed Tupa.</p> <p>20 Q. Do you know if Ed worked with</p> <p>21 anyone else with respect to pricing</p> <p>22 information?</p> <p>23 A. I believe so.</p> <p>24 Q. Who else did he work with?</p> <p>25 A. I can't say with any degree of</p>                             | <p style="text-align: right;">52</p> <p>1 A. Wholesale acquisition pricing for</p> <p>2 Oramorph SR and MS Contin.</p> <p>3 Q. What is MS Contin?</p> <p>4 A. It's a sustained release morphine</p> <p>5 sulfate tablet.</p> <p>6 Q. And is that an additional product</p> <p>7 that you had responsibility for during the</p> <p>8 1994 to the 1997 time period?</p> <p>9 A. No, that was a competitive product.</p> <p>10 Q. So the detail aid that you're</p> <p>11 referring to had wholesale acquisition cost</p> <p>12 information for Oramorph SR?</p> <p>13 A. Yes, I believe.</p> <p>14 Q. Did that same detail aid also have</p> <p>15 pricing information as to MS Contin?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall if that pricing</p> <p>18 information for MS Contin was also the</p> <p>19 wholesale acquisition cost for that product?</p> <p>20 A. I believe it was.</p> <p>21 Q. Did that detail aid also contain</p> <p>22 any information about average wholesale price?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Did it contain any other kind of</p> <p>25 pricing information?</p> |
| <p style="text-align: right;">51</p> <p>1 certainty.</p> <p>2 Q. So you mention that you looked at</p> <p>3 the competition, and you also developed detail</p> <p>4 aids during this time period. Was that</p> <p>5 specifically for the five products that you</p> <p>6 mentioned earlier, Oramorph SR, Roxanol,</p> <p>7 Roxicodone, Ipratropium Bromide UDV and</p> <p>8 Duraclon?</p> <p>9 A. Yes.</p> <p>10 Q. During this time period, did the</p> <p>11 detail aids contain information about pricing?</p> <p>12 A. Could you provide more detail in</p> <p>13 your question, please?</p> <p>14 Q. Did the detail aids that you</p> <p>15 helped develop during that time period contain</p> <p>16 information relevant to the customer about the</p> <p>17 cost, the acquisition cost for those products?</p> <p>18 MR. COVAL: Objection to form.</p> <p>19 A. Acquisition to who?</p> <p>20 Q. To the person -- To the customer</p> <p>21 who is being detailed?</p> <p>22 A. Yes.</p> <p>23 Q. And what kind of pricing</p> <p>24 information would it have -- would it</p> <p>25 contain?</p> | <p style="text-align: right;">53</p> <p>1 A. No.</p> <p>2 Q. And what was the purpose of</p> <p>3 including the WAC for Oramorph and the WAC</p> <p>4 for a competitive product?</p> <p>5 A. To show the cost advantage of</p> <p>6 using Oramorph SR over the competition.</p> <p>7 Q. When you say "cost advantage," are</p> <p>8 you referring to the cost advantage to the</p> <p>9 pharmacist?</p> <p>10 A. No, to the patient.</p> <p>11 Q. To the end user?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know who the manufacturer</p> <p>14 was for MS Contin?</p> <p>15 A. Purdue Frederick.</p> <p>16 Q. And was it your understanding that</p> <p>17 the WAC for Oramorph was lower than the WAC</p> <p>18 for MS Contin at that time period?</p> <p>19 A. Yes.</p> <p>20 Q. Were there any other detail aids</p> <p>21 that you can recall that contained pricing</p> <p>22 information?</p> <p>23 A. No.</p> <p>24 Q. Did any of those detail aids that</p> <p>25 you helped develop during that time period,</p>                                                                                            |

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16 (Pages 58 to 61)

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| <p style="text-align: right;">58</p> <p>1 assigning it -- between you and Ed of</p> <p>2 assigning it to another product manager?</p> <p>3 <b>A. Yes, on my part.</b></p> <p>4 Q. And what were those conversations</p> <p>5 involving?</p> <p>6 <b>A. I felt that my time was pretty</b></p> <p>7 <b>much taken up by my current responsibilities,</b></p> <p>8 <b>and I wouldn't have time to launch the</b></p> <p>9 <b>product.</b></p> <p>10 Q. And what was Ed's response to your</p> <p>11 concerns?</p> <p>12 <b>A. He felt that I could handle it.</b></p> <p>13 Q. And so you were ultimately assigned</p> <p>14 responsibility for the launch, correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And did you request assistance with</p> <p>17 respect to the Ipratropium Bromide launch?</p> <p>18 Did you request any assistance from Ed Tupa?</p> <p>19 <b>A. I don't recall.</b></p> <p>20 Q. Did you receive any assistance</p> <p>21 during the launch of Ipratropium Bromide from</p> <p>22 any third parties?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. From whom did you receive</p> <p>25 assistance?</p> | <p style="text-align: right;">60</p> <p>1 <b>A. The overview of the respiratory</b></p> <p>2 <b>market.</b></p> <p>3 Q. And which Boehringer Ingelheim</p> <p>4 employees provided that assistance to you?</p> <p>5 <b>A. I know there were several. One</b></p> <p>6 <b>that comes to mind is Scott Richardson.</b></p> <p>7 <b>Beyond that, I couldn't name any.</b></p> <p>8 Q. Do you recall what Scott's title</p> <p>9 was during that time period with Boehringer</p> <p>10 Ingelheim?</p> <p>11 <b>A. I believe he was a product</b></p> <p>12 <b>manager.</b></p> <p>13 Q. Did he have familiarity -- Was it</p> <p>14 your understanding that Scott Richardson had</p> <p>15 familiarity with this particular market,</p> <p>16 meaning chronic obstructive pulmonary disease</p> <p>17 or breathing?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Is it also your understanding that</p> <p>20 Boehringer Ingelheim had other products for</p> <p>21 that market during that time period?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. What were the other products that</p> <p>24 Boehringer Ingelheim had?</p> <p>25 <b>A. It was Atrovent MDI as well as</b></p> |
| <p style="text-align: right;">59</p> <p>1 <b>A. Boehringer Ingelheim as well as</b></p> <p>2 <b>Mark Pope.</b></p> <p>3 Q. With respect to the Duraclon</p> <p>4 launch, which occurred in 1996, was that also</p> <p>5 something that Ed Tupa assigned to you?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And did you receive any outside</p> <p>8 assistance or third-party assistance during</p> <p>9 that launch?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And from whom did you receive such</p> <p>12 assistance?</p> <p>13 <b>A. Our ad agency.</b></p> <p>14 Q. I'm sorry?</p> <p>15 <b>A. The advertising agency.</b></p> <p>16 Q. Do you recall the name of that ad</p> <p>17 agency?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Any other assistance that you</p> <p>20 received for that particular product?</p> <p>21 <b>A. No.</b></p> <p>22 Q. You mentioned Boehringer Ingelheim.</p> <p>23 What kind of assistance did you receive from</p> <p>24 Boehringer Ingelheim for the launch of</p> <p>25 Ipratropium Unit Dose Vials?</p>                                                                                    | <p style="text-align: right;">61</p> <p>1 <b>Atrovent Unit Dose Vial.</b></p> <p>2 Q. Is it fair then to characterize</p> <p>3 Ipratropium Bromide UDV as the generic of</p> <p>4 Atrovent UDV?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Atrovent UDV was a Boehringer</p> <p>7 Ingelheim product, correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. What was Atrovent MDI? How does</p> <p>10 Atrovent MDI differ from Atrovent UDV?</p> <p>11 <b>A. Delivery mechanism.</b></p> <p>12 Q. How is Atrovent MDI delivered?</p> <p>13 <b>A. A meter dose inhaler.</b></p> <p>14 Q. And how --</p> <p>15 <b>A. That doesn't require additional</b></p> <p>16 <b>equipment for delivery of the medication.</b></p> <p>17 Q. What about Atrovent UDV, how is</p> <p>18 that delivered?</p> <p>19 <b>A. It's a vial of solution that's</b></p> <p>20 <b>placed into a nebulizer and is inhaled via</b></p> <p>21 <b>the nebulizer.</b></p> <p>22 Q. Ipratropium Bromide UDV would then</p> <p>23 also be delivered using a nebulizer; is that</p> <p>24 correct?</p> <p>25 <b>A. Yes.</b></p>                                                                                |

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17 (Pages 62 to 65)

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| <p style="text-align: right;">62</p> <p>1 Q. Was there any other assistance that</p> <p>2 you received from Boehringer Ingelheim, other</p> <p>3 than -- I know you said there were others --</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. -- including Scott Richardson. Can</p> <p>6 you be more specific as to the type of</p> <p>7 information he provided to you?</p> <p>8 <b>A. More specific than an overview?</b></p> <p>9 <b>No.</b></p> <p>10 Q. When you say "overview," you mean</p> <p>11 an overview of the respiratory market,</p> <p>12 correct?</p> <p>13 <b>A. Overview and history of Atrovent</b></p> <p>14 <b>within that market.</b></p> <p>15 Q. And what's your recollection of the</p> <p>16 history with respect to Atrovent in that</p> <p>17 market?</p> <p>18 <b>A. That there was a segment of the</b></p> <p>19 <b>market that was overlooked on the launch of</b></p> <p>20 <b>Atrovent.</b></p> <p>21 Q. Which segment?</p> <p>22 <b>A. Home healthcare, and they addressed</b></p> <p>23 <b>that.</b></p> <p>24 Q. When you say "overlooked," does</p> <p>25 that mean that it was not -- Atrovent was</p> | <p style="text-align: right;">64</p> <p>1 are you referring to the time relative to the</p> <p>2 Ipratropium Bromide launch when you are</p> <p>3 getting the overview and the historical</p> <p>4 perspective?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. So did you have meetings, actual</p> <p>7 meetings, where you met with these BI</p> <p>8 employees?</p> <p>9 <b>A. To the best of my knowledge, just</b></p> <p>10 <b>one meeting.</b></p> <p>11 Q. And do you recall approximately</p> <p>12 when that meeting occurred?</p> <p>13 <b>A. It would have been prior to the</b></p> <p>14 <b>launch, so I can't give you an exact date.</b></p> <p>15 Q. Would it be months before the</p> <p>16 launch?</p> <p>17 <b>A. Yeah, probably so.</b></p> <p>18 Q. And do you recall the location of</p> <p>19 that meeting?</p> <p>20 <b>A. Roxane.</b></p> <p>21 Q. And was that in Connecticut then?</p> <p>22 <b>A. No, I'm sorry, it was in Roxane</b></p> <p>23 <b>Laboratories at Columbus, Ohio.</b></p> <p>24 Q. And do you recall who was in</p> <p>25 attendance? I know you said that Scott</p>                                                                                             |
| <p style="text-align: right;">63</p> <p>1 not made available to that market?</p> <p>2 <b>A. It wasn't taken into consideration</b></p> <p>3 <b>when production was planned.</b></p> <p>4 Q. And was there a shortage as a</p> <p>5 result of that?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Do you recall how long of a time</p> <p>8 period that shortage continued?</p> <p>9 <b>A. No.</b></p> <p>10 Q. You mentioned it was addressed,</p> <p>11 correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Do you know how it was addressed?</p> <p>14 <b>A. Just in discussion.</b></p> <p>15 Q. No, I mean how was it addressed</p> <p>16 ultimately to alleviate the shortage, if it</p> <p>17 ever was?</p> <p>18 <b>A. I don't recall.</b></p> <p>19 Q. There were discussions, though,</p> <p>20 apparently about the shortage?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. Were you involved in those</p> <p>23 discussions?</p> <p>24 <b>A. I believe I was present, yes.</b></p> <p>25 Q. And when you say you were present,</p>                                                                                                              | <p style="text-align: right;">65</p> <p>1 Richardson was there, but were there other</p> <p>2 Roxane employees?</p> <p>3 <b>A. There were other BI employees, and</b></p> <p>4 <b>then I believe Ed Tupa was there. I'm sure</b></p> <p>5 <b>there were other Roxane employees, but I</b></p> <p>6 <b>don't recall who they were.</b></p> <p>7 Q. The other -- You also mentioned</p> <p>8 Mark Pope as a third party that was brought</p> <p>9 in. What was your understanding of the role</p> <p>10 Mark Pope was supposed to play?</p> <p>11 <b>A. He was an outside consultant to</b></p> <p>12 <b>help develop the marketing plan for the</b></p> <p>13 <b>product.</b></p> <p>14 Q. And who brought Mark Pope in?</p> <p>15 <b>A. I can't be certain who brought him</b></p> <p>16 <b>in.</b></p> <p>17 Q. Did Ed Tupa? Do you know if Ed</p> <p>18 Tupa played any role in bringing Mark Pope</p> <p>19 aboard?</p> <p>20 <b>A. I would assume so, but I don't</b></p> <p>21 <b>know that with any degree of certainty.</b></p> <p>22 Q. And so did you work directly with</p> <p>23 Mark Pope during this launch period for</p> <p>24 Ipratropium Bromide UDV?</p> <p>25 <b>A. Yes.</b></p> |



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23 (Pages 86 to 89)

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| <p style="text-align: right;">86</p> <p>1 national presence or more of a regional<br/>2 presence?<br/>3 <b>A. More of a regional.</b><br/>4 Q. So that would be throughout<br/>5 Wisconsin or other states?<br/>6 <b>A. Primarily Wisconsin with a presence<br/>7 in Montana.</b><br/>8 Q. Somebody has to be in Montana,<br/>9 right?<br/>10 <b>A. I guess.</b><br/>11 Q. So we have that you called on<br/>12 group-purchasing organizations during that time<br/>13 period, and then you also picked up this<br/>14 regional wholesaler, D&amp;K, and then a regional<br/>15 drugstore, ShopKo. Were there any other<br/>16 responsibilities during this time period?<br/>17 <b>A. No.</b><br/>18 Q. And what is your understanding of<br/>19 how Roxane's sales force changed, if at all,<br/>20 during this 1997-2000 time period?<br/>21 <b>A. It was approximately toward the end<br/>22 of 2000, I believe Roxane limited their<br/>23 palliative care sales force.</b><br/>24 Q. And you called that the palliative<br/>25 care sales force; is that correct?</p> | <p style="text-align: right;">88</p> <p>1 Q. Who was in charge of that sales<br/>2 force?<br/>3 <b>A. Mark Shaffer.</b><br/>4 Q. Was he in charge in the 2000 time<br/>5 period?<br/>6 <b>A. Yes, I believe he was.</b><br/>7 Q. Do you know -- I may have asked<br/>8 you this earlier. Do you know if Mark<br/>9 Shaffer is still with Roxane?<br/>10 <b>A. No, he is not.</b><br/>11 Q. Do you know if he's with<br/>12 Boehringer Ingelheim or BIPI?<br/>13 <b>A. Yes, he's with BIPI.</b><br/>14 Q. Do you know in what capacity he is<br/>15 employed by BIPI?<br/>16 <b>A. Director of senior care, I believe<br/>17 is his title.</b><br/>18 Q. And do you know where Mark Shaffer<br/>19 is based now?<br/>20 <b>A. Richfield, Connecticut.</b><br/>21 Q. How many other national account<br/>22 managers were there during the 1997 to 2000<br/>23 time period?<br/>24 <b>A. Four, I believe.</b><br/>25 Q. And who were they, if you can</p>                                          |
| <p style="text-align: right;">87</p> <p>1 <b>A. Correct.</b><br/>2 Q. And how many members were there of<br/>3 the palliative sales force in 2000?<br/>4 <b>A. Approximately 35 to 50. Then<br/>5 there was an HIV sales force also that was<br/>6 approximately the same size that moved over<br/>7 to Boehringer Ingelheim as a complete sales<br/>8 force.</b><br/>9 Q. And when you say "to Boehringer<br/>10 Ingelheim," do you mean the company we're<br/>11 referring to as BIPI?<br/>12 <b>A. Correct.</b><br/>13 Q. And how large was the HIV sales<br/>14 force at that time?<br/>15 <b>A. I believe they were approximately<br/>16 35 to 50 as well.</b><br/>17 Q. And the palliative sales force that<br/>18 was eliminated around the 2000 time period,<br/>19 what products were they -- Let me ask you<br/>20 this: Were they detailing up to 2000?<br/>21 <b>A. Yes.</b><br/>22 Q. And what product were they<br/>23 detailing?<br/>24 <b>A. Oramorph SR, Roxanol, Roxicodone.<br/>25 I believe that's it.</b></p>                                         | <p style="text-align: right;">89</p> <p>1 recall?<br/>2 <b>A. Mike Doan, Dawn Gordon, Colin<br/>3 Carr-Hall, Anthony Tavoraro, and then we also<br/>4 had Steve Snyder, Penny Hawthorne. That's it<br/>5 for national account managers.</b><br/>6 Q. And who did you report to during<br/>7 the 1997-2000 time period?<br/>8 <b>A. I reported to three different<br/>9 people.</b><br/>10 Q. And who were those people?<br/>11 <b>A. Initially it was Gerry Walsh, with<br/>12 a G, I believe, Bob Sykora, Rich Feldman.</b><br/>13 Q. And did you report to all three<br/>14 during the same time period?<br/>15 <b>A. You mean simultaneously?</b><br/>16 <b>Q. Correct.</b><br/>17 <b>A. No.</b><br/>18 Q. You reported to each of these<br/>19 three individuals at some point during the<br/>20 '97 through 2000 time period, correct?<br/>21 <b>A. Correct.</b><br/>22 Q. Who was your first --<br/>23 <b>A. Gerry Walsh.</b><br/>24 Q. And then Bob Sykora?<br/>25 <b>A. Correct.</b></p> |

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39 (Pages 150 to 153)

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| <p style="text-align: right;">150</p> <p>1 MS. NEMIROW: This is Kim Nemirow.<br/> 2 Can we get the Bates number on Exhibit 5,<br/> 3 please?<br/> 4 MR. GOLDENBERG: On five? That is<br/> 5 ROX-CA 002090 and ROX-CA 002091.<br/> 6 MS. NEMIROW: Thank you.<br/> 7 MR. GOLDENBERG: Sure.<br/> 8 Now we're on Exhibit 6. This is<br/> 9 -- The front page of this is a fax<br/> 10 transmission from Pope &amp; Associates to Tom<br/> 11 Via from Mark Pope dated April 9, 1996, Bates<br/> 12 No. ROX-CA 002094. The second page begins<br/> 13 with a Ipratropium Bromide UDV market overview<br/> 14 and runs all the way through ROX-CA 002112,<br/> 15 and it appears to relate to the product<br/> 16 launch of Ipratropium Bromide UDV.<br/> 17 THE WITNESS: Okay.<br/> 18 BY MR. GOLDENBERG:<br/> 19 Q. If you would, this document --<br/> 20 taken in conjunction with the prior document,<br/> 21 which was Exhibit 5 -- in that first sentence<br/> 22 in particular in Exhibit 5 where Mark Pope<br/> 23 says to you, "Thanks for the fax of the<br/> 24 proposed IBUDV product launch," do you see<br/> 25 that?</p> | <p style="text-align: right;">152</p> <p>1 "this," Exhibit 6 is a version of the<br/> 2 Ipratropium Bromide UDV product launch,<br/> 3 correct?<br/> 4 A. <b>In draft form, yes.</b><br/> 5 Q. Whether it's the same draft version<br/> 6 that Mark Pope is referring to in Exhibit 6,<br/> 7 it doesn't appear to be correct?<br/> 8 MR. COVAL: Exhibit 5 you mean.<br/> 9 A. <b>Correct, I don't know if it is the<br/> 10 same or not.</b><br/> 11 Q. Okay. Specifically with respect to<br/> 12 Exhibit 6, do you recognize this document as<br/> 13 something that you received during your time<br/> 14 at Roxane?<br/> 15 A. <b>I don't recall that I did, but the<br/> 16 fax was addressed to me.</b><br/> 17 Q. You don't have any reason to<br/> 18 believe that you wouldn't have received this,<br/> 19 correct?<br/> 20 A. <b>No. And, in fact, there are<br/> 21 notations that are my handwriting.</b><br/> 22 Q. Where do you see such notations?<br/> 23 Can you give us the Bates number on the<br/> 24 bottom?<br/> 25 A. <b>ROX-CA 002098.</b></p> |
| <p style="text-align: right;">151</p> <p>1 A. <b>Yes.</b><br/> 2 Q. Is this, what we're now calling<br/> 3 Exhibit 6, if you take away the first page,<br/> 4 which is the fax memorandum, the next series<br/> 5 of pages beginning with ROX-CA 002095 through<br/> 6 2112, do you see those pages?<br/> 7 A. <b>Yes.</b><br/> 8 Q. Is that a draft version of the<br/> 9 Ipratropium Bromide product launch?<br/> 10 A. <b>Yes.</b><br/> 11 MR. COVAL: I would object. Are<br/> 12 you asking -- Just so I'm clear, Jeff, are<br/> 13 you asking whether this is the document that<br/> 14 Pope refers to in the March 28th --<br/> 15 MR. GOLDENBERG: Yeah, that's one<br/> 16 way to phrase it.<br/> 17 THE WITNESS: That, I don't know.<br/> 18 MR. COVAL: This is April 9, that<br/> 19 would have been after that.<br/> 20 THE WITNESS: I don't know if this<br/> 21 is the document that he refers to.<br/> 22 MR. COVAL: Date-wise it would be<br/> 23 inconsistent.<br/> 24 BY MR. GOLDENBERG:<br/> 25 Q. This is a version -- When I say</p>                                                                            | <p style="text-align: right;">153</p> <p>1 Q. And you're talking about -- There<br/> 2 is a series of numbers written off on the<br/> 3 left-hand side; is that right?<br/> 4 A. <b>Yes.</b><br/> 5 Q. What you're saying is that is your<br/> 6 handwriting, correct?<br/> 7 A. <b>Yes.</b><br/> 8 Q. Based on your review of this<br/> 9 document, what is it?<br/> 10 A. <b>It is the -- It's a draft of the<br/> 11 marketing -- or the launch plan for marketing<br/> 12 Ipratropium Bromide Unit Dose Vials.</b><br/> 13 Q. And this particular draft contains<br/> 14 bold script comments from Mark Pope, correct?<br/> 15 MR. COVAL: Objection to form.<br/> 16 A. <b>Based on his comment on the fax<br/> 17 memorandum, yes.</b><br/> 18 Q. And your assessment of this<br/> 19 document is based on your review of it,<br/> 20 correct?<br/> 21 A. <b>Correct.</b><br/> 22 Q. When do you recall last seeing<br/> 23 this document prior to today outside of a<br/> 24 privilege?<br/> 25 A. <b>I don't recall seeing it.</b></p>                           |

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40 (Pages 154 to 157)

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| <p style="text-align: right;">154</p> <p>1 Q. If you look at the top of the</p> <p>2 front of that fax cover sheet, and you see</p> <p>3 what appears to be some scribble there next</p> <p>4 to the name Mark Pope, do you recognize that?</p> <p>5 <b>A. That's Mark's initials or</b></p> <p>6 <b>signature. I don't know if it was his full</b></p> <p>7 <b>signature or just initials.</b></p> <p>8 Q. And do you have a recollection of</p> <p>9 accepting most of the changes or suggestions</p> <p>10 that Mark Pope made in this draft?</p> <p>11 MR. COVAL: Objection.</p> <p>12 <b>A. I don't have a recollection one</b></p> <p>13 <b>way or the other.</b></p> <p>14 Q. So you may have, but you just</p> <p>15 don't recall?</p> <p>16 MR. COVAL: Objection.</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. Okay. I'm finished with that</p> <p>19 document.</p> <p>20 MR. GOLDENBERG: This is Exhibit</p> <p>21 7. We're on Exhibit 7, which is Bates RoxCT</p> <p>22 0060403 through RoxCT 0060419, and it is on</p> <p>23 the front page entitled "Ipratropium Inhalation</p> <p>24 Solution UDV Marking Plan," and it says,</p> <p>25 "Prepared by Tom Via," and it's dated April</p> | <p style="text-align: right;">156</p> <p>1 deposition itself?</p> <p>2 MR. COVAL: At the deposition</p> <p>3 itself is fine.</p> <p>4 THE WITNESS: I don't remember if</p> <p>5 I did or not.</p> <p>6 MR. COVAL: Well, that's your</p> <p>7 answer.</p> <p>8 THE WITNESS: I can't recall the</p> <p>9 specific date, but I have seen this before.</p> <p>10 BY MR. GOLDENBERG:</p> <p>11 Q. Okay. Let's move on then. Was</p> <p>12 this document -- This document was prepared</p> <p>13 by you, correct, because it has your name on</p> <p>14 the bottom?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. This was prepared in the regular</p> <p>17 course of your business activities with</p> <p>18 Roxane, correct?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. And also this was prepared as part</p> <p>21 of your regular job duties, responsibilities</p> <p>22 with Roxane, correct?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And when was this document created?</p> <p>25 <b>A. It was dated April 17, 1996. I</b></p>                                                                                                     |
| <p style="text-align: right;">155</p> <p>1 17, 1996.</p> <p>2 BY MR. GOLDENBERG:</p> <p>3 Q. Are you finished, Tom?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Do you recognize this document as</p> <p>6 one that you would come across or produce</p> <p>7 during your time period at Roxane?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. What is this document?</p> <p>10 <b>A. It's the marketing plan for the</b></p> <p>11 <b>launch of Ipratropium Bromide Unit Dose Vials</b></p> <p>12 <b>for Roxane Laboratories.</b></p> <p>13 Q. And your assessment of this</p> <p>14 document is based on your review of it,</p> <p>15 correct?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And when do you last recall seeing</p> <p>18 this document prior to today outside of a</p> <p>19 privileged situation?</p> <p>20 <b>A. It would have been preparation for</b></p> <p>21 <b>the Texas deposition.</b></p> <p>22 MR. COVAL: That's privileged.</p> <p>23 THE WITNESS: Is it?</p> <p>24 MR. COVAL: Yes. Aside from that.</p> <p>25 THE WITNESS: What about at the</p>                                                                                                                                            | <p style="text-align: right;">157</p> <p>1 <b>have no reason to believe it wasn't anything</b></p> <p>2 <b>other than that date.</b></p> <p>3 Q. And this is -- I just want to be</p> <p>4 clear. This is a document that you prepared,</p> <p>5 correct?</p> <p>6 <b>A. Well, yeah.</b></p> <p>7 Q. You are the author of this</p> <p>8 document, correct?</p> <p>9 <b>A. Yes, with input from others.</b></p> <p>10 Q. Okay. From whom did you receive</p> <p>11 input?</p> <p>12 <b>A. I would have received input from</b></p> <p>13 <b>Ed Tupa and from Mark Pope based on the</b></p> <p>14 <b>previous exhibit that you showed me.</b></p> <p>15 Q. Okay. After reviewing this</p> <p>16 document, which is Exhibit 7, do you recall</p> <p>17 now whether you adopted most of Mr. Pope's</p> <p>18 suggestions?</p> <p>19 <b>A. It appears as though that was the</b></p> <p>20 <b>case.</b></p> <p>21 Q. A few questions about this</p> <p>22 particular document. If you go to the first</p> <p>23 page and you look at the heading, it says,</p> <p>24 "Market overview." Do you see that?</p> <p>25 <b>A. Yes.</b></p> |

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41 (Pages 158 to 161)

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| <p style="text-align: right;">158</p> <p>1 Q. You go down to the third</p> <p>2 paragraph, which starts, "According to BIPI."</p> <p>3 A. Yes.</p> <p>4 Q. Why don't you go ahead and read</p> <p>5 that paragraph?</p> <p>6 A. "According to" --</p> <p>7 Q. You don't need to read it into the</p> <p>8 record. You can read it to yourself. I am</p> <p>9 going to ask you a couple of questions.</p> <p>10 A. All right. Thanks. Okay.</p> <p>11 Q. This paragraph, does this give you</p> <p>12 -- It appears that what you are trying to do</p> <p>13 here -- tell me if I'm correct or not -- is</p> <p>14 give some history as to Atrovent UDV, and</p> <p>15 there was a supply problem that occurred soon</p> <p>16 after the launch; is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. What is your understanding of what</p> <p>19 happened with respect to that shortage?</p> <p>20 A. When Boehringer launched the</p> <p>21 product, they overlooked the health home care</p> <p>22 product, and they built capacity, manufacturing</p> <p>23 capacity, around the market that they were</p> <p>24 aware of, which, based on this, was primarily</p> <p>25 the hospital market. The home care market</p> | <p style="text-align: right;">160</p> <p>1 the allotments were lifted." Is that</p> <p>2 correct?</p> <p>3 A. That's what it says, yes.</p> <p>4 Q. So Roxane was producing Atrovent</p> <p>5 UDV at a certain point; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. What are the RT lines, if you</p> <p>8 know?</p> <p>9 A. I believe RT stand for respiratory</p> <p>10 therapy.</p> <p>11 Q. And so those would have been</p> <p>12 additional lines that were created at that</p> <p>13 point; is that right?</p> <p>14 A. Correct.</p> <p>15 Q. And then if you would turn to the</p> <p>16 second page, which is RoxCT 0060405, and look</p> <p>17 at that first full paragraph.</p> <p>18 A. What was that number again?</p> <p>19 Q. It just is the second page. Are</p> <p>20 you missing it? 60405.</p> <p>21 A. Oh, okay. Sorry. All right.</p> <p>22 Q. The reason you see multiple Bates</p> <p>23 numbers is because this was produced in more</p> <p>24 than one case, and we gave it two different</p> <p>25 Bates numbers.</p>                                                                                                                                                              |
| <p style="text-align: right;">159</p> <p>1 was overlooked, resulting in a greater demand</p> <p>2 than what was anticipated for the product,</p> <p>3 and production capacity couldn't meet the</p> <p>4 demand.</p> <p>5 Q. So was it your understanding, as a</p> <p>6 result of being the person responsible for</p> <p>7 the launch or overseeing the launch of</p> <p>8 Ipratropium Bromide UDV for Roxane, that as a</p> <p>9 result of that shortage compounding Ipratropium</p> <p>10 Bromide became more common?</p> <p>11 MR. COVAL: Objection.</p> <p>12 A. I don't know if it became more</p> <p>13 common. It just wasn't displaced. If it</p> <p>14 had been going on before, the commercially</p> <p>15 available product didn't displace the practice</p> <p>16 of compounding.</p> <p>17 Q. So home care agencies may have</p> <p>18 been compounding prior to the launch of</p> <p>19 Atrovent UDV, you just don't know; is that</p> <p>20 right?</p> <p>21 A. Correct.</p> <p>22 Q. And then the last sentence in that</p> <p>23 paragraph, it says, "This system was in</p> <p>24 effect until the new RT lines were installed</p> <p>25 at Roxane, and beginning in October of 1995,</p>             | <p style="text-align: right;">161</p> <p>1 What is this paragraph relating to?</p> <p>2 A. Which paragraph?</p> <p>3 Q. The first full paragraph. Take</p> <p>4 your time if you need to review it.</p> <p>5 A. Okay.</p> <p>6 Q. This paragraph is referring to a</p> <p>7 portion of the potential market for</p> <p>8 Ipratropium Bromide UDV known as the</p> <p>9 compounding market; is that correct?</p> <p>10 A. I think it really pertains to the</p> <p>11 total market, not just the compounding. It</p> <p>12 does mention the compounding, but it does</p> <p>13 show that the home healthcare segment of the</p> <p>14 market is not reporting to IMS, and that's</p> <p>15 the 40 percent of the market -- or 40</p> <p>16 percent of the Boehringer Ingelheim sales</p> <p>17 weren't captured by IMS. So, I mean, it's</p> <p>18 just more than addressing compounding, it's</p> <p>19 addressing the total market.</p> <p>20 Q. Part of that total market is made</p> <p>21 up of those pharmacies or home care</p> <p>22 pharmacies that were compounding, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And it potentially is a significant</p> <p>25 number of business; is that correct?</p> |

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42 (Pages 162 to 165)

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| <p style="text-align: right;">162</p> <p>1       <b>A. That's what it states, yes.</b></p> <p>2       Q. If you would look at the last</p> <p>3 sentence in that paragraph and read that</p> <p>4 please?</p> <p>5       <b>A. Into the record?</b></p> <p>6       Q. Yes.</p> <p>7       <b>A. "It is likely that Roxane could</b></p> <p>8 <b>capture a significant portion of the</b></p> <p>9 <b>compounding market, providing the pricing</b></p> <p>10 <b>provides a large enough spread to maintain</b></p> <p>11 <b>acceptable profit levels."</b></p> <p>12       Q. Okay. With respect to your use of</p> <p>13 the word "spread," what are you referring to</p> <p>14 there?</p> <p>15       <b>A. I'm not 100 percent certain what I</b></p> <p>16 <b>am referring to, but I can tell you what I</b></p> <p>17 <b>believe it is.</b></p> <p>18       Q. Are you referring to the spread</p> <p>19 between the acquisition cost and the AWP?</p> <p>20       <b>A. I believe that's what it is.</b></p> <p>21       Q. And when you say "profit levels,"</p> <p>22 you are referring to the profit levels of the</p> <p>23 home healthcare or the large home care</p> <p>24 pharmacies that you reference earlier in that</p> <p>25 paragraph, correct?</p> | <p style="text-align: right;">164</p> <p>1       that you're the author of, you were having</p> <p>2 some input into the pricing process; is that</p> <p>3 correct?</p> <p>4       MR. COVAL: Objection.</p> <p>5       <b>A. It appears I made a recommendation,</b></p> <p>6 <b>yes.</b></p> <p>7       Q. What was that recommendation based</p> <p>8 on from your review of this?</p> <p>9       <b>A. That the AWP be established at 10</b></p> <p>10 <b>percent less than the brand or Atrovent Unit</b></p> <p>11 <b>Dose Vial and the WAC will be AWP less 40</b></p> <p>12 <b>percent.</b></p> <p>13       Q. Specifically with the AWP price</p> <p>14 that you recommend here, that's consistent</p> <p>15 with the document you saw earlier?</p> <p>16       <b>A. Which document?</b></p> <p>17       Q. Let's go back and look at it,</p> <p>18 because I'm not sure which one it was,</p> <p>19 specifically where Mark Pope made a</p> <p>20 recommendation of 10 percent less than the</p> <p>21 brand. Let me see if I can find that for</p> <p>22 you. It would be, I think, Exhibit 3,</p> <p>23 February 23, 1996, Pope &amp; Associates.</p> <p>24       <b>A. The Denver trip report?</b></p> <p>25       Q. Correct.</p> |
| <p style="text-align: right;">163</p> <p>1       <b>A. The way it is stated here, yes.</b></p> <p>2       Q. So this would be an example, or</p> <p>3 one instance at least, where the term</p> <p>4 "spread" was utilized in a Roxane marketing</p> <p>5 plan, correct?</p> <p>6       <b>A. It was mentioned, yes.</b></p> <p>7       Q. And then, if you would, turn to</p> <p>8 page .RoxCT 0060407.</p> <p>9       <b>A. Okay.</b></p> <p>10       Q. And look -- There is a heading</p> <p>11 there that says, "Pricing," correct?</p> <p>12       <b>A. Correct.</b></p> <p>13       Q. Take a minute just to review that</p> <p>14 first paragraph under the pricing heading.</p> <p>15       <b>A. Okay.</b></p> <p>16       Q. In your earlier testimony today we</p> <p>17 talked a little bit about what role, if</p> <p>18 anything, you can recall that you played in</p> <p>19 pricing.</p> <p>20       <b>A. Right.</b></p> <p>21       Q. And I believe you said you didn't</p> <p>22 have any recollection at that time of any</p> <p>23 role that you played?</p> <p>24       <b>A. Right.</b></p> <p>25       Q. It appears that, from the document</p>                                                                                            | <p style="text-align: right;">165</p> <p>1       <b>A. All right.</b></p> <p>2       Q. The second bullet point under</p> <p>3 discussion points.</p> <p>4       <b>A. Okay.</b></p> <p>5       Q. Do you see where it says, "I think</p> <p>6 10 percent would be best?" Is that an</p> <p>7 accurate reading?</p> <p>8       <b>A. Yes.</b></p> <p>9       Q. Just to be clear, the entire</p> <p>10 bullet reads, "Talley suggested that AWP</p> <p>11 should be set at no lower than 20 percent</p> <p>12 less than the brand. I think 10 percent</p> <p>13 would be best," correct?</p> <p>14       <b>A. Correct.</b></p> <p>15       Q. And so in the actual memo or</p> <p>16 marketing plan for the launch, which we're</p> <p>17 looking at as Exhibit 7, brand less 10</p> <p>18 percent is the AWP price that you were</p> <p>19 recommending, correct?</p> <p>20       <b>A. Correct.</b></p> <p>21       Q. And then you go on to make a</p> <p>22 recommendation for WAC, which will be AWP</p> <p>23 less 40 percent, correct?</p> <p>24       <b>A. Correct.</b></p> <p>25       Q. And if a customer were to purchase</p>                                                                                                      |

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43 (Pages 166 to 169)

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| <p style="text-align: right;">166</p> <p>1 at WAC a 25-count package, then that price<br/>2 would come out to \$26.44, correct?<br/>3 <b>A. Correct.</b><br/>4 Q. And then I do have a question.<br/>5 Again the term "spread" comes up in the next<br/>6 sentence, which reads, "The reason this type<br/>7 of price structure is used for generic launch<br/>8 is to create an attractive spread between WAC<br/>9 and AWP encouraging accounts to convert from<br/>10 the brand name to generic product as quickly<br/>11 as possible." Here, again, you're talking<br/>12 about spread as being defined as the<br/>13 difference between WAC and AWP, correct?<br/>14 <b>A. Correct.</b><br/>15 Q. And how does this type of price<br/>16 structure -- and I'm quoting your language<br/>17 there -- create an attractive spread which<br/>18 would then encourage accounts to then convert<br/>19 from the brand to the generic?<br/>20 <b>A. That would be profit for the</b><br/>21 <b>account, and they would -- If they were</b><br/>22 <b>making more money, they would be more likely</b><br/>23 <b>to convert from brand to generic.</b><br/>24 Q. So they would make more profit by<br/>25 distributing to their customers the generic</p> | <p style="text-align: right;">168</p> <p>1 established what the wholesaler price should<br/>2 be prior to launch, correct? You're making a<br/>3 recommendation it should be \$23.80, correct?<br/>4 MR. COVAL: Objection.<br/>5 <b>A. For the source programs.</b><br/>6 Q. Do all wholesalers have source<br/>7 programs or only some?<br/>8 <b>A. I don't know.</b><br/>9 Q. You don't know. So it's possible<br/>10 some wholesalers were getting it at 23.80?<br/>11 <b>A. Yes.</b><br/>12 Q. But maybe not all, is that what<br/>13 you're saying?<br/>14 <b>A. Yes.</b><br/>15 Q. I think that's it for that. How<br/>16 are you doing on your ability to --<br/>17 MR. COVAL: Take a break.<br/>18 (Recess taken.)<br/>19 MR. GOLDENBERG: We're on Exhibit<br/>20 8. This is a short document. It's two<br/>21 pages. It's an interoffice memo from Tom Via<br/>22 to Ed Tupa dated April 28, 1996, the subject<br/>23 of which is Ipratropium Bromide UDV pricing<br/>24 strategy for legal review. And it is Bates<br/>25 No. ROX-CA 001981 through ROX-CA 001981.</p>                                                                                                                        |
| <p style="text-align: right;">167</p> <p>1 brand versus the brand?<br/>2 <b>A. Yes.</b><br/>3 MR. COVAL: Objection to form.<br/>4 Q. Then if you would look at this<br/>5 same page where it says the wholesaler<br/>6 heading.<br/>7 <b>A. Uh-huh.</b><br/>8 Q. Go to that last paragraph where it<br/>9 starts, "To obtain," do you see that?<br/>10 <b>A. Yes.</b><br/>11 Q. It's a fairly short paragraph, and<br/>12 it goes on to the next page. Why don't you<br/>13 review that. You don't need to read it into<br/>14 the record.<br/>15 <b>A. Okay.</b><br/>16 Q. So, based on this paragraph, you're<br/>17 making the recommendation as to wholesalers in<br/>18 particular that Ipratropium Bromide UDV should<br/>19 be placed on a wholesaler's source program<br/>20 with an additional 10 percent rebate, bringing<br/>21 the total price or the wholesaler price to<br/>22 \$23.80, correct?<br/>23 <b>A. Correct.</b><br/>24 Q. If the wholesaler price is going<br/>25 to be \$23 -- What you're saying here is you</p>                                                                                                                                                                                                             | <p style="text-align: right;">169</p> <p>1 THE WITNESS: Okay.<br/>2 BY MR. GOLDENBERG:<br/>3 Q. And if you would -- Let me ask<br/>4 you a couple preliminary questions, Tom. You<br/>5 recognize this document as something you<br/>6 created during your time at Roxane, correct?<br/>7 <b>A. Yes.</b><br/>8 Q. And based on your review of this<br/>9 document, what is it?<br/>10 <b>A. It appears to be a memo to Ed</b><br/>11 <b>Tupa regarding pricing strategy. It says for</b><br/>12 <b>legal review. Without reading the whole</b><br/>13 <b>thing, I'm not sure.</b><br/>14 Q. You're not sure. You can take the<br/>15 time to review it to make sure that is an<br/>16 accurate assessment. In fact, I want you to.<br/>17 <b>A. Okay. I'm ready to go.</b><br/>18 Q. So what is this document?<br/>19 <b>A. This was a document that was put</b><br/>20 <b>together for Ed to take to our attorneys for</b><br/>21 <b>review to make sure that it was going to</b><br/>22 <b>pass the Robinson-Patman test. And at the</b><br/>23 <b>time our attorney that was working on that --</b><br/>24 <b>Can I say that, who the attorneys were?</b><br/>25 MR. COVAL: You can say who they</p> |